

**STATE OF NORTH CAROLINA
COUNTY OF IREDELL**

**THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 09735**

**YOUTH ENRICHMENT SERVICES OF)
LKN, LLC and Clarissa Carr, Personally)
Petitioners,)
)
v.)
)
PARTNERS BEHAVIORAL HEALTH)
MANAGEMENT,)
Respondent.)**

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into effective the date executed (“Effective Date”) by Petitioners Youth Enrichment Services of LKN, LLC (aka Youth Enrichment Services of Lake Norman, Inc., dissolved)(“YES”) and Clarissa Carr, personally (collectively “Petitioners” or “Party”) and Respondent Partners Behavioral Health Management (“Respondent” or “Partners”) (collectively “Parties” and individually “Party”), provided prior to close of business Friday, January 27, 2017.

WITNESSETH:

WHEREAS, the Parties have one or more contracts for the provision by Petitioners of publicly-funded mental health, substance use, and intellectual/developmental disabilities (MH/SU/IDD) services to Partners’ consumers enrolled in North Carolina Burke, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry and Yadkin Counties (“Catchment Area”); and

WHEREAS, Partners conducted a post-payment review (aka “audit”) of a selection of Petitioners’ paid claims for the period of September 1, 2014 through September 30, 2015;

WHEREAS, Partners identified that Petitioners failed to adhere to Clinical Coverage Policy 8C, which states that family therapy must be billed once per date of service for the identified family member only and failed to comply with multiple records request for the 131 non-compliant claims totaling \$9,768.67 in overpayments; and

WHEREAS, Partners issued a Tentative Notice of Overpayment (“TNO”) dated March 24, 2016, with adverse findings from the post-payment review, notifying Petitioners that they had received Medicaid overpayments in the amount of \$9,768.67 due to the above referenced violations; and

WHEREAS, Petitioners disputed this TNO internally with Partners per due process procedures in place for same; and

WHEREAS, Partners reviewed the dispute and issued a Notice of Decision dated September 16, 2016, upholding the Partners-determined overpayment of \$9,768.67 (“Partners Final Decision”); and

WHEREAS, thirty-five (35) days after the deadline for OAH subject matter jurisdiction under NC. Gen. Stat. § 150B-23(f), Petitioners filed this above-styled case 16 DHR 09735 (“Contested Case”) in the North Carolina Office of Administrative Hearings (OAH) challenging Partners Final Decision; and

WHEREAS, OAH has to date refused to grant dismissal on subject matter grounds despite Superior Court decisions to the contrary, to which Respondent has reserved appeal rights; and

WHEREAS, Petitioner identified that she adhered to Clinical Coverage Policy 8C, and further asserts that the sessions identified by Partners as family sessions were in fact properly billable individual therapy sessions; but

WHEREAS, the Parties desire to compromise and settle any and all existing, known, or reasonably foreseeable disputes, claims, or rights between them, arising from this dispute, as set forth above; and

WHEREAS, the Parties have reached a compromise settlement resolving the differences between them on the existing disputes described herein, the terms and conditions of which are set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, for agreed upon good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, for themselves and their predecessors, successors, managers, assigns, officers, directors, employees, and agents, agree as follows:

1. No Admissions: The settlement effected by this Agreement is a compromise of disputed claims, made to avoid the uncertainty and expense of potential litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, illegal conduct, nonconformity, error, other deficiency or legal position on the part of any Party. Any such alleged liability, illegal conduct, nonconformity, error, or other deficiency is expressly denied by the respective Parties.

2. Dismissal: Petitioners will fully and voluntarily dismiss with prejudice this above-styled Contested Case within three (3) business days after the complete execution of this Agreement.

3. Partners Obligations: Within three (3) business days after Partners receives official notice of closure of this Contested Case, and for so long as Petitioners timely comply with all obligations herein, Partners:

- a. Waives any applicable penalty and interest associated therewith;
- b. Agrees not to seek recoupment or recovery against Petitioners for the 131 claims with dates of service covered in this Contested Case and TNO other than in compliance with this Agreement.

4. Petitioners' Obligations: Petitioners:

- a. Certifies in signing this Agreement:
 - i. that any issues and processes giving rise to this matter, have been cured;
 - ii. Petitioners has fully and accurately disclosed to Partners all of its monthly gross revenues over the past 18 months from all sources.

- b. Agrees to pay Partners \$7,000.00 in the following manner:
 - i. \$1,000.00 received by Partners on the 3rd calendar day of every month (or first business day thereafter if Partners is closed) via cashier's check for a period of five months and \$2,000.00 paid to Partners on the 3rd calendar day of the sixth month.
 - ii. Repayment to commence (Payment Commencement Date) by close of business Friday, February 3, 2017.
 - iii. Full and final payment must be received by Partners no later than close of business, Monday, July 3, 2017.
- c. If Petitioners fails to timely and fully satisfy any obligations as set forth in this Settlement Agreement, Petitioners authorize Partners immediately without further notice to:
 - i. to seek collection by all lawful means, including recoupment from as many check writes owed to Petitioners as necessary and filing judgment in appropriate court for the full \$9,768.67 of the Final Decision, plus penalties and interest, less any payments received; and
 - ii. to invoke any other lawful sanctions against Petitioners subject to Partners' standard operating procedures, including full recovery of the unpaid portion of the full disputed amount.

5. Indemnification: Petitioners will indemnify and hold harmless Partners for any and all damages (less payments made in accordance with this Agreement) Partners might incur from or pay to state or federal regulators, Recovery Audit Contractors (RACs) or other authorities for not recouping any additional funds from Petitioners regarding the dispute resolved by this Agreement, notwithstanding the mutual release below. Partners agrees to reasonably notify Petitioners and defend against any such recovery attempts against Partners.

6. Mutual Release: Subject to the terms and obligations of this Agreement, each Party hereby releases the other, its current and former officials, employees, agents and representatives from any and all liability and causes of action that have arisen out of the TNO, Partners Final Decision, and this Contested Case.

7. Costs: All attorneys' fees, costs, and expenses related to all cases and disputes described herein shall be borne by each Party individually, and no claim for such fees, costs or expenses shall be made.

8. Merger Clause: This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.

9. Waiver of Breach: The non-enforcement by Partners of any noncompliance or failure to perform, in whole or in part by Petitioners under this Agreement, shall not operate or be construed as a waiver of any current or subsequent breach by the Parties or acquiescence thereto.

10. Choice of Law, Forum Selection and Severability: This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina, without regard to conflicts of laws principles, in any litigation, arbitration or legal proceedings arising out of this Agreement. The Parties understand, acknowledge and agree that the sole venue for all administrative and legal actions

upon this Agreement shall be in a North Carolina court of competent jurisdiction located in one of the counties of Partners' catchment area at that time, or the U.S. District Court for the Western District of North Carolina, Charlotte Division. If any provisions of this Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, all other provisions shall nevertheless continue in full force and effect unless material to the overall Agreement.

11. Acknowledgement: Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes the Agreement voluntarily as its own act. Each Party further acknowledges that it has conferred to the extent that it has deemed appropriate with legal counsel regarding this Agreement prior to its execution.

12. Execution: This Agreement may be executed in counterparts, each of which shall be an original, and all of which taken together shall constitute one and the same instrument. The Parties shall exchange electronic signatures on this Settlement Agreement or if mutually agreed, written signatures by facsimile or e-mail, which shall be acceptable and deemed binding as if originals.

13. Warranted Authority: The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties.

THIS SETTLEMENT AGREEMENT is agreed to and executed by the Parties hereto:

YOUTH ENRICHMENT SERVICES OF LKN, LLC

By: Clarissa Carr 1/26/2017 | 4:22 PM EST
DocuSigned by: 01C999046EC44FF...
 Clarissa Carr, CEO Date
 635 West McLelland Avenue
 Mooresville, NC 28115

CLARISSA CARR, Personally

By: Clarissa Carr 1/26/2017 | 4:22 PM EST
DocuSigned by: 01C999046EC44FF...
 Clarissa Carr Date
 635 West McLelland Avenue
 Mooresville, NC 28115

PARTNERS BEHAVIORAL HEALTH MANAGEMENT

By: W. Rhett Melton 1/26/2017 | 4:58 PM EST
DocuSigned by: AB2FAD60736F4A4...
 W. Rhett Melton, CEO Date
 901 South New Hope Road
 Gastonia, NC 28054